

**ORDER DENIED**

The motion is denied. Movant has cited absolutely no authority for the ex parte mechanism for the entry of a protective order nor is there any reason why this motion should not be noticed and set for argument.

Entered on Docket
December 08, 2006

Hon. Linda B Riegle
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

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|----------------------------------|-----------------------------|
| In re: | Case No.: BK-S-06-10725 LBR |
| USA COMMERCIAL MORTGAGE COMPANY, | Case No.: BK-S-06-10726 LBR |
| Debtor. | Case No.: BK-S-06-10727 LBR |

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| In re: | Case No.: BK-S-06-10728 LBR |
| USA CAPITAL REALTY ADVISORS, LLC, | Case No.: BK-S-06-10729 LBR |
| Debtor. | Chapter 11 |

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| In re: | Jointly Administered Under Case No. BK-S-06-10725 LBR |
| USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, | |
| Debtor. | |

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|---|-------------------------|
| In re: | PROTECTIVE ORDER |
| USA CAPITAL FIRST TRUST DEED FUND, LLC, | |
| Debtor. | |

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| | |
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| In re: USA SECURITIES, LLC, Debtor. | |
| Affects: All Debtors USA Commercial Mortgage Company USA Securities, LLC USA Capital Realty Advisors, LLC USA Capital Diversified Trust Deed Fund, LLC USA Capital First Trust Deed Fund, LLC | Hearing Date: January 3, 2007 Hearing Time: 9:30 a.m. Place: Courtroom 1 Foley Federal Building 300 Las Vegas Blvd. South |

WHEREAS, from as early as 2001 through the spring of 2006, USA Commercial Mortgage Company, USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC, USA Capital First Trust Deed Fund, LLC, USA Securities, LLC (collectively the “Debtors”) and USA Investment Partners, LLC (“USAIP”) were operated and managed by a common management team, including Mr. Joseph D. Milanowski (“Milanowski”) at a common location at 4484 and 4480 South Pecos Road, Las Vegas, Nevada (the “Offices”), and, as a result, USAIP’s and the Debtors’ documents and information were stored, filed and held at the Offices; and

WHEREAS, the Debtors filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code on April 13, 2006; and

WHEREAS, the Debtors, USAIP and Milanowski (collectively, the “Parties”) have since made collective efforts to identify and segregate and maintain *inviolable* documents in the Offices that belong to USAIP and/or Milanowski; and

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1 WHEREAS, the Parties have segregated documents, currently held in one hundred forty-four
2 (144) boxes held at the Offices, over which USAIP and/or Milanowski assert either a sole or joint
3 interest or privilege (“Documents”); and
4

5 WHEREAS, there are additional documents at the Offices that remain to be segregated,
6 including, but not limited to, documents from certain accountants’ offices and certain electronic
7 documents; and
8

9 WHEREAS, to establish a procedure to maintain the integrity of the Documents, facilitate
10 access to the Documents, and to permit the orderly disposition of any claims of privilege or other
11 protection with respect to any of them, Milanowski and USAIP moved this Court for the endorsement
12 of this Protective Order (the “Order”).
13

14 NOW THEREFORE, based upon the foregoing facts, the Parties shall be bound as follows:

15 **PRIVILEGE AND CONFIDENTIALITY REVIEW**

16 (1) This Order is entered into in accordance with Bankruptcy Rules 7206 and
17 9018 and Federal Rule of Evidence 501 in order to provide for the protection of confidential
18 information.
19

20 (2) The Parties shall conduct a review of the Documents (“Review”). During the
21 Review, the Parties shall designate any documents over which they assert the attorney-client privilege,
22 attorney work product protection, and/or any other legally recognized claim of privilege or protection.
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1 (3) Documents designated as privileged by one or more of the Parties shall be
2 removed from the Documents, and each Party shall, no later than fourteen (14) days following the
3 completion of the Review, serve a privilege log identifying those Documents over which it asserts
4 privilege. The privilege log shall comply with all applicable legal, rule and local rule requirements for
5 the description and specification of documents.

6
7 (4) If there is a disagreement as to any Party's designation of a Document as
8 privileged, the Party asserting privilege shall make a motion to the Court seeking a ruling on the issue.
9 No Party shall produce any Document over which any Party has asserted privilege unless and until the
10 Court has resolved the issue.
11

12 (5) Each Party shall retain the original hard copies of any documents over which
13 it asserts privilege. In the event that more than one Party asserts privilege over the same document, the
14 Parties shall agree as to which will retain the original, and the other Parties shall be provided with
15 copies.
16

17 (6) In addition, the Parties shall designate any Documents which they assert are
18 properly designated as "Confidential" ("Confidential Documents"). It is understood that Confidential
19 Documents shall include all internal business records that are not otherwise publicly available, as well
20 as records containing confidential personal data (such as Social Security numbers) or other personal,
21 non-business-related communications, private correspondence, third-party confidential documents and
22 bank records.
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1 (7) If there is a disagreement as to any Party's designation of a document as
2 confidential, the Party asserting confidential treatment shall make a motion to Court seeking a ruling
3 on the issue.
4

5 **CUSTODY AND DUPLICATION**

6 (8) Following the completion of the Review, counsel for USAIP and Milanowski
7 shall arrange for a vendor, under terms agreeable to the Debtors, to image the Documents and to label
8 them with control numbers. USAIP and the Debtors will share evenly the cost of this imaging and
9 numbering process.
10

11 (9) The original non-privileged Documents shall be retained at a storage site in or
12 around Las Vegas, Nevada, or such other venue as agreed upon by the Parties. No Party shall have
13 access to the storage site unless all Parties are present with their counsel or one or more Parties has
14 waived their right to be present.
15

16 (10) An electronic copy of the non-privileged Documents shall be provided to each
17 of the Parties. The entry of this Order shall be deemed an order pursuant to Rule 2004 of the Federal
18 Rules of Bankruptcy Procedure entered in favor of each Party against the other Party, requiring such
19 Party to produce the Documents to the other respective Party.
20

21 (11) The Documents shall be deemed to be held by the Parties as they were held by
22 the Parties prior to the entry and "So Ordering" of the Order. The retention and sharing of the
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1 Documents among the Parties shall not be deemed to effect a waiver as to any of the Parties or any
2 third-parties of any attorney-client privilege, attorney work product protection, or any other legally
3 recognized claim of privilege or protection that may apply to any of the Documents as to any of the
4 Parties or any third-parties.

5
6 **THIRD-PARTY REQUESTS**

7 (12) In addition to the obligations set forth in paragraph five (5) above, if any of
8 the Parties receives any subpoena, request for production of documents, or other similar legal process
9 in this or any other proceeding (including any proceeding before any other court, legislature,
10 regulatory agency, law enforcement agency or administrative body), and determines that a document
11 contained on the privilege log of any other party is responsive to such subpoena, request for production
12 of documents, or other similar legal process, the party receiving the third-party subpoena, request, or
13 other legal process shall (1) provide notice of such to the party asserting privilege; (2) inform the
14 requesting party of the assertion of privilege; and (3) refrain from producing such document(s) until
15 authorized to do so by the party asserting privilege or by a court order.
16

17 (13) Immediately upon receipt of a subpoena, request for production of documents,
18 or other similar legal process in this or any other proceeding (including any proceeding before any
19 other court, legislature, regulatory agency, law enforcement agency or administrative body) seeking
20 the production of any Confidential Document or any portion or subpart thereof, the party receiving the
21 subpoena or other legal process must notify the other Parties as provided below. Each party retains its
22 rights to move to quash a subpoena or similar request. In the event that the receiving party is unable to
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1 notify the other parties of receipt of the subpoena, request or other legal process within two (2) days of
2 such receipt, the receiving party will seek an extension to the response date of the subpoena, request or
3 other legal process, equivalent to the time period elapsed between receipt of the subpoena, request or
4 other legal process and notification of the other parties of such receipt.

5
6 (14) No Party may disclose any Confidential Document to any third-party,
7 including, but not limited to, any creditors' committee, in response to an oral or informal request.
8 Disclosure of any Confidential Document to any third-party may be made only in response to a
9 subpoena, document request or other legal process in accordance with the provisions of paragraph 13
10 herein.
11

12 (15) In the event that counsel for any of the Parties intends to file or submit any of
13 the Confidential Documents to this Court or any other court, the filing party shall advise either (a)
14 advise all other Parties of this intention at least five (5) business days prior to any such proposed filing;
15 or (b) file any such Confidential Documents under seal. The Parties will endeavor in good faith to
16 resolve any objections to the inclusion of such Documents in the filing. To the extent that the Parties
17 are unable to resolve such objections, any party objecting to such filing shall seek relief before the
18 court in which the Confidential Documents have, or are to be, filed.
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20 (16) In the event that any of the Parties is served with a search warrant requiring
21 immediate access to the Documents, the receiving party will notify the other Parties immediately upon
22 execution of the search warrant.
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1 (17) Any copies (including electronic copies) of the Confidential Documents shall
2 be treated as if they were part of the Confidential Documents in the first instance and shall be treated in
3 accordance with the provisions of this Order.
4

5 **ADDITIONAL DESIGNATIONS**

6 (18) Additional documents, including electronic documents, that have not yet been
7 segregated remain at the Offices, and the Parties shall designate additional segregated documents to
8 fall within the scope of this Order.
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10 **DISPOSITION OF DOCUMENTS**

11 (19) Unless otherwise agreed to by the Parties, within one year after the effective
12 date of the plan or dismissal of this bankruptcy case, whichever occurs first, the Parties will make good
13 faith efforts to reach an agreement as to the disposition of any of the Documents, including any copies,
14 excerpts, summaries, abstracts or analyses, and any such agreement must be approved by this Court.
15 To the extent that the Parties cannot reach any such agreement, any Party may make a motion to the
16 Court.
17

18 **NOTICES**

19 (20) Any notice provided pursuant to this Order shall be provided as follows:
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- 21 (a) if to the Debtors, by electronic mail and facsimile to: Elaine A. Monson, Esq.,
22 emonson@rqn.com, (801) 532-7543; and Allan T. Brinkerhoff, Esq.,
23 abrinkerhoff@rqn.com, (801) 532-7543;
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(b) if to USAIP or Mr. Milanowski, by electronic mail and facsimile to: Douglas E. Griffith, Esq., dgriffith@kesler-rust.com, (801) 531-7965; Kenneth M. Breen, Esq., kbreen@fulbright.com, (212) 318-3400; and Russell S. Walker, rwalker@woodburykesler.com, (801) 359-2320.

SO ORDERED:

Honorable Linda B. Riegle
United States Bankruptcy Judge

Date: _____

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UNDERTAKING

I have read the foregoing Protective Order (the “Order”) in the action entitled *In re USA Commercial Mortgage Company, et al.*, jointly administered under Case No. BK-S-06-10725 LBR (Bankr. D. Nev.), and I agree to be bound by its terms and conditions with respect to any documents, information or materials that are furnished to me other than as set forth in the Stipulation and Order and not to make any copies of such documents, material or information except in accordance with the Order. I hereby consent to the jurisdiction of the United States Bankruptcy Court for the District of Nevada with regard to any proceedings to enforce the terms and conditions of the Order.

Name:

Dated:

_____, _____